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NTSB Order No. EA-4316

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of January, 1995

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| _____ |) | |
| DAVID R. HINSON, |) | |
| Administrator, |) | |
| Federal Aviation Administration, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Dockets SE-12695 |
| |) | SE-12696 |
| |) | |
| DONALD L. BEDNAR, and |) | |
| ROBERT C. BEDNAR, |) | |
| Respondents. |) | |
| _____ |) | |

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge Jimmy Coffman, issued on December 17, 1992, following a 2-day evidentiary hearing.¹ The law judge dismissed an order of the Administrator suspending respondents' private pilot certificates for 30 days. We grant the appeal and affirm the Administrator's charge that respondents

¹The initial decision, an excerpt from the hearing transcript, is attached.

violated 14 C.F.R. 47.13(b)(1) and 91.203(a)(2).² We modify the sanction, however, to a \$500 civil penalty.

The basis for the Administrator's order was his determination that, on April 29, 1991, respondents operated N6917J, an aircraft owned by Donald Bednar, when the aircraft had not been registered and was not carrying a current registration certificate. According to the Administrator, the aircraft had never been issued a permanent registration.

The Administrator offered a witness from the FAA records center, Ms. Margo Hearon, who offered details of the process in this case and generally. She testified that Donald Bednar's application for registration had been rejected for failure to pay the \$5 application fee, and that the letter informing him of this rejection was returned (undelivered) to the FAA by the Postal Service. She also explained that the temporary, "pink copy" registration that was issued in 1985, following receipt of the

²Section 47.13(b)(1) reads:

(b) No person may operate an aircraft that is eligible for registration under section 501 of the Federal Aviation Act of 1958 unless the aircraft --

(1) Has been registered by its owner.

Section 91.203(a)(2) reads:

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(2) An effective U.S. registration certificate issued to its owner or, for operation within the United States, the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

registration application, expired by its own terms after 90 days.

According to this witness, no permanent registration was issued to the Bednars until May 1, 1991 (immediately after the complained-of incident). The FAA, she explained, expects the owners to do the necessary follow-up if they do not timely receive their registrations. The FAA does not do so. Thus, the aircraft documentation (bill of sale, registration application, and returned rejection letter) was placed in a "suspense" file, and apparently not consulted until the events that led to this order.³

Respondents' primary defense is that the registration had to be in the aircraft because, during the course of many inspections that required paperwork review, no one had told them that it was missing. The law judge accepted this speculation, and relied on it, as well as the general fallibility of the FAA's record-keeping, in dismissing the complaint. We reverse the law judge's decision because we find that he relied too greatly on this unfounded speculation, rather than on an analysis of the weight of the evidence presented. In our view, the preponderance of the evidence supports the Administrator's claims: there is more than

³The combination of this status, the apparently nonexistent address for Donald Bednar, and the color scheme of the aircraft (in which the aircraft number was hard to read) led Mr. Rick Buczek, an FAA inspector working in Florida in a drug investigation unit, to suspect, seeing the aircraft in Miami, that it was involved in narcotics trafficking. Working in conjunction with the Customs Service, a warrant was obtained for a search of the aircraft. The search took place on April 30, 1991. No narcotics were found, but Mr. Buczek was informed that there was no valid registration certificate on the aircraft (thus leading to the instant complaint).

sufficient reliable evidence to find that there was no registration in the aircraft on April 30 or during the April 29 flight and that no registration had ever been issued by the FAA.

First, according to the FAA witness, no permanent registration was ever issued. The reliability of Ms. Hearon's testimony is buttressed by the fact that no triennial forms were sent to Mr. Bednar, and these forms would have been sent had the FAA had a record of him as a registered owner. Tr. Vol. 1 at 75.

Respondents would have us find that they were issued a registration even though there is absolutely no evidence of such an event, nor have they offered any convincing or reliable evidence to support a finding that somehow they received a registration that is undocumented in the FAA's records. The fact that an entry error had Donald Bednar listed as Donald Rednar in the FAA's owner records does not justify that conclusion nor, as discussed infra, does reliance on an unsworn statement of their regular mechanic.

There is also considerable other support for the Administrator's allegations. The Bednars relied on a broker to complete the paperwork for the purchase, and did not check to ensure it had been done properly. Tr. Vol. 2 at 27-28, 45, 51-52. The Bednars kept all the aircraft papers together in one place in the aircraft. Yet, when asked on April 30 to produce the registration, they could not. At the hearing, Robert Bednar admitted this fact (see Tr. at 47), and this alone substantiates the § 91.203(a)(2) charge, violation of which requires only a

showing that the registration certificate was not in the aircraft. All that could be produced was the temporary, pink registration slip, and a Customs Agent present when the warrant was executed testified that the Bednars did not understand the difference between a permanent registration and the temporary one. Tr. Vol. 2 at 10-11. See also Exhibit A-6, Mr. Buczek's summary of Customs Agent's report of investigation.

Although much of this is circumstantial evidence, the rebuttal is unconvincing. That an entry error had Donald Bednar listed as Donald Rednar in the FAA's owner records and the possibility that, as with any set of records, FAA records could be in error, are not in our view sufficient reasons to overcome the Administrator's presentation. Although respondents also point to a statement from their mechanic (Exhibit R-12) supporting their view that a permanent registration actually existed in the aircraft, his unsworn statement says no such thing. It states only that he performed substantially all the maintenance on the aircraft and in the course of reviewing the aircraft's papers, he never noted "any deficiencies, errors or omissions relating to the aircraft paperwork for N6917J." Mr. Clark, moreover, refused to sign a sworn statement that he had seen the permanent registration.⁴ Although respondents make much of the Administrator's failure to call Mr. Clark, they also had

⁴Mr. Buczek's interview (see Exhibit A-7) notes are more favorable to respondents, indicating that Mr. Clark was confident that he had observed a registration certificate, but that he could not swear to having seen one.

the opportunity to offer him as a witness.⁵

Respondents had the duty to ensure they did not operate an aircraft that was not properly registered. The preponderance of the evidence supports a conclusion that, albeit entirely unwittingly, they failed in this duty. The violations of § 47.13(b)(1) and 91.203(a)(2) have been established.⁶

The Administrator's choice of a 30-day certificate suspension has no cited grounding in policy or precedent and, we believe, is too severe a penalty in the circumstances. Indeed, counsel for the Administrator acknowledged the lack of FAA or Board precedent.⁷ In our view, a \$500 penalty against each

⁵He appeared at the hearing but was not called to testify.

⁶Although the result we reach does not require that we inquire into the law judge's credibility assessments, we must note our difficulty with acceptance of the Bednars' testimony that the registration definitely was on the aircraft. Their testimony to this effect (Tr. Vol. 2 at 22 and 55) is inconsistent with other testimony they offered at the hearing that they **assumed** the registration was there and they had no reason to think it was not there (*id.* at 34 and 44-45), and also conflicts with their earlier writings, as well as the already-mentioned statements they made to others on April 30. See, e.g., *id.* at 28 (discussing letter Donald Bednar wrote to FAA in 1991 in which he stated "Failure on the part of the broker to include a \$5.00 fee resulted in a series of unfortunate events.") and *id.* at 49 (discussing letter Robert Bednar wrote to FAA in 1991 stating that, on April 30, 1991, during a routine flight, he first became aware that the registration could not be located on the plane).

In any case, as a credibility matter the most that can be concluded from an acceptance, on credibility grounds, of respondents' testimony is that they believed they had a current registration. The Administrator persuasively showed they were incorrect in that belief.

⁷Tr. Vol. 2 at 61 ("Some sort of penalty has to be imposed. Certainly a finding has to be made and some sort of penalty has

respondent is an appropriate sanction.⁸

(..continued)

to be imposed. Be it fifteen days, 30 days. Part of the reason, we do not see a significant amount of case law on registrations by themselves is, and I'm sure the Judge is aware, they all settle. Rarely do we actual[ly] get a trial or a hearing involving registration only. With that in mind, we recommend -- we propose 30 days consistent with the 2150.3(A). The case law is really not clear on it because it really never had a registration only issue but, the FAA feels that 30 days is appropriate for both with the finding."). Counsel's mere reference to 2150.3(A) (the FAA's sanction guidance table), without discussion of its applicability and relevance in this specific case, does not, in our view, require deference to the Administrator's sanction choice.

⁸The Administrator has filed a motion to strike certain language in respondents' reply brief, language ostensibly not in the record, addressing the terms of the Administrator's "final 'offer to settle.'" Respondents have replied in opposition, suggesting that the information was in the record, having been the subject of statements at the hearing by trial counsel for the Administrator.

The motion is granted. Trial counsel's statements at the hearing were general ones, and noted the prohibition against referring to terms discussed during settlement negotiations. Respondents went farther than repeating trial counsel's statements in their discussion in the reply brief of specific settlement terms allegedly offered by the Administrator. Consideration of such information is inappropriate and contrary to public policy.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted to the extent set forth in this opinion;
2. The initial decision is modified as set forth in this opinion; and
3. The \$500 civil penalty assessed against each respondent shall be paid to the FAA within 30 days of the date of service of this order.

HALL, Chairman, HAMMERSCHMIDT and FRANCIS, Members of the Board, concurred in the above opinion and order.